

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

WILLIAM P. McDANNOLD, et al.,)	
)	Case No. C-1-94-0002
Plaintiffs,)	
)	Judge Thomas M. Rose
v.)	
)	Magistrate Judge Michael Merz
STAR BANK, N.A., et al.,)	
)	
Defendants.)	

**JOINT MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT AND MEMORANDUM IN SUPPORT**

Plaintiffs, forty-four participants and the Trustee of the Electro-Jet Tool & Mfg. Co., Inc. Employee Stock Ownership Plan, and Defendants, William N. Kirkham, Lindhorst & Dreidame Co., L.P.A., Gradison & Company, Inc., Star Bank, N.A., John Endres, Joyce Richter, Laura Gerding and Paul Weber, and Third-Party Defendants, Thomas A. Simons, Jr. and Graydon Head & Ritchey (all of the foregoing collectively referred to as the “Settling Parties”), by their undersigned counsel, pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, jointly move this Court for preliminary approval of the settlement agreement entered into by the Settling Parties. In support of this joint motion, the Settling Parties submit the accompanying memorandum.

MEMORANDUM

At a lengthy Court-ordered mediation session held on February 16, 2004, and with the able assistance of Magistrate Judge Michael Merz, a settlement was reached in this ten-year-old lawsuit. The parties have executed a certain Settlement Agreement¹, which bears an effective

¹ The majority of the parties have already executed the Settlement Agreement. The remaining few that have not yet signed have committed to do so and counsel expect to have all parties’ signatures by the time of the upcoming hearing.

date of February 25, 2004, and is attached in full as Exhibit 1. The Settlement Agreement constitutes a good faith compromise of disputed claims, and was the product of arms-length bargaining. As discussed further below, Plaintiffs and their counsel believe that this settlement is fair, reasonable, adequate and in the best interests of the Electro-Jet Tool & Mfg. Co., Inc. Employee Stock Ownership Plan (the “Plan”) and its participants. Accordingly, the Settling Parties jointly request that this settlement be approved.

The principal terms of the Settlement Agreement, which requires Court approval pursuant to Rule 23.1, are as follows: the Settling Defendants/Third-Party Defendants shall pay the total sum of Fourteen Million Three Hundred Thirty-Four Thousand and Seventy Dollars (\$14,334,070.00) to the Plan. (See, Settlement Agreement, at ¶ 2) Defendants Weber and Gerding shall forfeit their entire account balances in the Plan as of February 25, 2004, and shall be considered former participants that are not entitled to share in the proceeds of the Settlement Agreement. (See, Settlement Agreement, at ¶ 6) The Settling Parties will mutually release each other (See, Settlement Agreement, at ¶ 5) and dismiss with prejudice all pending claims in this action except for Plaintiffs’ claim against Defendant Hare. (See, Settlement Agreement, at ¶ 1(B)) The Final Approval Order will contain a Rule 54(b) finding, such that the pending claim against Hare will not delay the finalization and consummation of the settlement. (See, Settlement Agreement, at Exhibit C)²

Plaintiffs and their counsel believe that the Settlement Agreement is fair, reasonable and in the best interests of the Plan and its participants. As this Court is well aware, the claims in this case were vigorously contested by all of the Settling Defendants/Third-Party Defendants (all of

² The Settling Defendants/Third-Party Defendants have also agreed to withdraw their objections to Plaintiffs’ pending motion to default Hare (Doc. 544) on the condition that the default order includes an order barring Hare from asserting any claims against the Settling Parties which arise from or relate in any way to this lawsuit. (See, Settlement Agreement, at ¶ 10) Hence, upon entry of the default order as to Hare, the only remaining proceedings in this case will involve Plaintiffs proving up their damages against Hare and obtaining a default judgment. Upon that event, all claims in this case shall be fully resolved and disposed of.

whom, as is their right, continue to deny liability). While the monetary amount of the settlement is less than Plaintiffs would have sought in damages at trial, it is more than the amount of damages the Defendants have contended would have been recoverable even if Defendants were found liable. The payment amount in the Settlement Agreement can also be viewed as reasonable and fair, in that the \$14.334 million settlement recovery by the Plan is greater than the amount two experts in this litigation (Plaintiffs' expert Pipich, and Star's expert Rolfs) opined would now be in the Plan had this ESOP transaction never occurred.

The settlement approval process contemplated by the Settlement Agreement is as follows: upon the Court's entry of the Preliminary Approval Order (Exhibit A to the Settlement Agreement), the Notice of Proposed Settlement and Hearing Thereon (the "Notice," Exhibit B to the Settlement Agreement) will be sent to the 69 participants in the Plan who did not join as Plaintiffs (the "Non-Plaintiff Participants"). The Notice will advise the Non-Plaintiff Participants of the terms of the settlement, of their right to file written objections (no less than ten days prior to the final approval hearing) and of the date, time and place of the final approval hearing. At the final approval hearing, the Settling Parties will request that this Court enter the Final Approval Order and Judgment of Partial Dismissal (Exhibit C to the Settlement Agreement). Plaintiffs request that the Court schedule the final approval hearing in late March, 2004 -- within 30 days of the entry of the Preliminary Approval Order.

Based upon the above, the Settling Parties jointly request that this Court grant preliminary approval to the Settlement Agreement, enter the Preliminary Approval Order in the

form attached as Exhibit A to the Settlement Agreement, and schedule a date for the final approval hearing.

Dated: February 24, 2004

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2004, I electronically filed the foregoing **Joint Motion for Preliminary Approval of Settlement Agreement and Memorandum in Support** with the Clerk of the Court using the CM/ECF system, which will result in notification of such filing to be electronically sent to counsel of record for each of the parties in this matter entitled to notice. As there is no known address for Defendant Hare, notice is not being sent to him.

s/ **Michael D. Hayes**